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THE SCOPE OF MILITARY JUSTICE

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Symptomatic of prevailing attitudes toward military justice is the recent remark of a law school professor upon hearing a proposal to offer a course in the subject at his school: "Humph! We might as well teach canon law." No pun was intended. He felt, as probably most lawyers do, that military justice was a small, highly specialized branch of law, worthy of attention only in time of war, and even then applying to comparatively few people and affecting their lives in a relatively insignificant way. He failed, as many others do, to appreciate the part played by military justice in the total administration of criminal law in the United States.

It is well known that military justice differs materially from civilian criminal justice both in matters of substantive law and in matters of procedure. What is not so well known is how much of the total crime problem of the nation is handled within the armed forces. It is the purpose of this article to explore that question. Two comparisons are made. One deals with what might be called "Crime potential": how many criminal offenses[1] can be expected from the armed forces and from civilians, respectively, percentagewise? The other deals with actual judicial business: how many criminal cases are tried by courts-martial as compared with the number tried by civilian courts? The answers to these questions will prove only that an unexpectedly large part of the criminal business of the nation is entrusted to military authorities. However, that fact, plus the already existing realization that military justice is vastly different from civilian criminal justice, should reveal

1. This article does not deal with what some sociologists call "deviant behavior" generally, but with crime in the technical, legal sense of conduct which is punishable through legal proceedings by traditional criminal sanctions.

that this area is worthy of more attention and study than it has thus far received.

CRIME POTENTIAL

Statistical Analysis

At the height of mobilization in World War II, there were 12,300,000 persons in the armed forces of the United States[2] as compared with a total population of 130,000,000 for the nation.[3] These figures would seem to indicate that almost 10 percent of the nation's crime potential was among persons subject to military law—a not insignificant figure.

The figure swells, however, as the make-up of the armed forces is analyzed in the light of the normal incidence of crime according to sex and age. The services were not a representative cross-section of the population, but were composed predominantly of the sex and age groups in which the incidence of crime is highest. Men, who account, approximately, for 90 percent of all crime,[4] constituted the overwhelming bulk of the armed forces. There were over 12,000,000 men, as contrasted with about 275,000 women.[5] Furthermore, about 75 percent of the men were under 30 years of age, and of the remainder, 20 percent were between the ages of 30 and 40.[6] According to general crime statistics, persons between 17 and 30 account for at least 45 percent of the total crime of the nation and those between 30

2. THE WORLD ALMANAC, 1949, p. 325. This article deals only with military justice as applied to persons serving as uniformed members of the armed forces of the United States. It should be realized, however, that military jurisdiction extends over a great many other people at certain times and under certain conditions: civilians serving with the armed forces in the field, citizens of occupied hostile countries; prisoners of war; and even ordinary civilian citizens of the United States when living under martial law. The additional problems posed by the extension of military jurisdiction over such persons, though not considered in this article, indicate that even greater significance should be attributed to the role of the armed forces in the total administration of criminal justice.

3. THE WORLD ALMANAC, 1949, p. 163. The population figures used for comparisons dealing with peak mobilization are those of the 1940 census, that being the one closest to the period being compared. All figures are approximate and deal with population within the continental limits of the United States.

4. All figures used in this article with respect to crime potential for certain age and sex groups are based on averages for the years 1941, 1948, 1949, and 1950 taken from the *Uniform Crime Reports,* United States Government Printing Office:

Vol. XII	Pp. 202-207	(1941)
Vol. XIX	Pp. 113-117	(1948)
Vol. XX	Pp. 111-115	(1949)
Vol. XXI	Pp. 107-110	(1950)

These statistics are based upon FBI records of persons fingerprinted after being arrested for violations of state laws and municipal ordinances. The figures obviously do not cover unreported crime or even all reported crime, but they seem to provide a fair sampling, at least for purposes of such a comparison as we are trying to make.

5. SELECTIVE SERVICE AND VICTORY, United States Government Printing Office 1948, p. 617.

6. All figures used in this article dealing with the age breakdown of men in service are approximations based on Selective Service tables showing the ages of men at the dates of their entrance into the Army and Navy. See AGE IN THE SELECTIVE SERVICE PROCESS, Special Monograph 9, United States Government Printing Office, 1946, pp. 274, 284.

and 40 account for about 25 percent.[7] Discounting these figures by one-tenth for the amount of crime attributable to women of those age groups, we arrive at the conclusion that men between 17 and 30 are responsible for slightly more than 40 percent and those between 30 and 40 are responsible for about 23 percent of the total crime of the nation.

When we combine with these statistics, others showing what percentage of the nation's males in the significant age groups were in the armed forces, we approach some degree of accuracy in estimating the crime potential handled by the military authorities as compared with that left to civilian authorities. According to the 1940 census, there were slightly fewer than 15 million males in the nation between 17 and 30.[8] Nine million of these, or 60 percent, were in the armed forces.[9] Since this age and sex group accounts for 40 percent of the total crime, it would seem that the armed forces, acquiring 60 percent of the group, would thereby acquire 24 percent of the total crime potential of the nation (60 percent x 40 percent = 24 percent).

Similarly, there were slightly under 10,000,000 males in the nation between the ages of 30 and 40.[10] Of these, 2,400,000 or 24 percent, were in the armed forces.[11] Since the group as a whole accounts for 23 percent of the nation's crime, it follows that the armed forces, acquiring 24 percent of the men, would thereby also acquire 6 percent of the total crime potential of the nation (24 percent x 23 percent = 6 percent).

Adding these two figures together, we reach the conclusion that, at the time of peak mobilization in World War II, 30 percent of the total crime of the nation could be expected to be in the armed forces. This disregards the potential crime that might be anticipated from the small group of men over 40 (5 percent of the total) and the women serving in the armed forces. In other words, subject to factors to be discussed later, it would appear that 70 percent of the total crime potential in the nation was left to civilian authorities while 30 percent was placed in the hands of military authorities—a ratio of about 2 to 1.

The foregoing figures deal with the crime potential of the civilian

7. See note 4, *supra.*
8. THE WORLD ALMANAC, 1949, p. 199.
9. This figure is based upon the percentages of different age groups in the armed forces (see note 6 *supra*) as applied to strength at peak mobilization. (75 percent x 12,000,000 = 9,000,000).
10. THE WORLD ALMANAC, 1949, p. 199.
11. This figure is based upon the percentages of different age groups in the armed forces (see note 6 *supra*) as applied to strength at peak mobilization (20 percent x 12,000,000 = 2,400,000).

population of the entire nation as compared with that of the total military population. It must be remembered, however, that in dealing with military justice, we are dealing with what is now a single system, whereas civilian criminal justice is divided among 48 separate state systems and a federal system. Until recently, the Army and Navy operated separate, though similar, systems; but since May 31, 1951, there is a Uniform Code of Military Justice,[12] applying to all of the armed services. For this reason, a comparison of the military system with individual civilian systems appears justified. The results are even more striking.

New York, our most populous state, provides an interesting focus. The total population of the state was about 13,500,000 people,[13] but half of these were women; and of the men, most of them were too young or too old to account for a large volume of crime. If we use the same type of analysis that has been applied to the comparison of the population of the armed forces with the total civilian population of the nation, it appears that the armed forces at the peak of World War II mobilization had three times the crime potential of the state of New York in time of peace. New York in 1940 had about 1,400,000 men over 17 years and under 30 years of age.[14] This group, based on national statistics, could be expected to account for 40 percent of the state's total crime. The armed forces had, during World War II peak mobilization, about 9,000,000 men in the same age group, or more than six times as many. Those men would be expected, therefore, to account for a volume of crime per year more than six times as large as the volume of crime expected from all men of the same age group in the state of New York in a year of peace. This amounts to 259 percent of the total crime expected from all people in the state, according to the foregoing figures. Similarly, New York had that year about 1,100,000 men in the age group 30 through 39.[15] Based on national averages, this group could be expected to account for 23 percent of the state's total crime. The armed forces at World War II peak mobilization, had 2,400,000 men in the same age group or more than twice as many. These men, therefore, would be expected to account for a volume of crime per year about twice as large as the volume of crime expected from all men of the same age group in the

12. Public Law 506—81st Cong., Ch. 169—2d Session.
13. THE WORLD ALMANAC, 1949, p. 164.
14. SIXTEENTH CENSUS (1940) POPULATION, Vol. IV, p. 611.
15. *Ibid.*

state of New York. This amounts to 50 percent of the total crime expected from all people in the state, according to the foregoing figures. Adding the two figures together, we see that the armed forces at peak mobilization had about 300 percent of the total crime potential of the state of New York in time of peace—a ratio of 3 to 1. In time of war, of course, many of New York's men would be in the armed forces, thus materially diminishing the crime problem faced by the civilian authorities of the state. The significant decrease of civilian crime in time of war[16] would be difficult to explain were it not for the role played by military justice.

The only civilian system which has criminal jurisdiction over more people than New York's is that of the Federal government. Its jurisdiction, however, is limited as to subject matter. Since the Federal government has no power to define crime generally except in such places as are subject to its exclusive jurisdiction, (certain territories, military reservations and the like),[17] primary power to define and punish crime remains vested in the states. Congress can legislate for the entire nation only with respect to matters enumerated in the Federal constitution,[18] and consequently the Federal criminal system handles only crimes which are connected with the currency, the mails, national defense, interstate commerce and so forth. There are comparatively few such crimes.[19] The military system, as will be shown more fully later, handles all crimes committed by military personnel, including all that are common to civilian criminal law as well as a great many others.

Unless the statistics just given are to be disturbed, the largest single system of criminal justice in the nation in time of war would appear to be that administered by the military authorities.

Are the figures to be discounted? Can they be discounted on the ground that men in the armed services are selected in such a way as to eliminate those with criminal tendencies? Or on the ground that the jurisdiction of military courts is limited or ineffectual? Or on the ground that conditions of life in the services are such as to diminish crime? These questions will be discussed in the order indicated.

16. UNIFORM CRIME REPORTS, Vol. XIX, No. 2 p. 118; THE WORLD ALMANAC, 1949, p. 462; LUNDEN, STATISTICS ON CRIME AND CRIMINALS, Stevenson and Foster Co., Pennsylvania 1942, pp. 141-146.

17. U.S. Constit. Art. IV, Sec. 3; Art. I, Sec. 8.

18. U.S. Constit. Art. I, Sec. 8.

19. Federal criminal law is growing vigorously, in the sense that many crimes formerly considered solely the responsibility of the states are coming under the cognizance of Federal authorities because of their interstate aspects. Nevertheless, the fact remains that Congress does not have general power to legislate with respect to crime.

Screening of Potential Criminals

First, are men in the services a select group from whom less crime can be expected than from their brothers in civilian life?

Selective Service regulations provide part of the answer to this question. At the beginning of World War II, some attempt was made to screen out men with criminal tendencies. "IV F" was the classification given to men whom the armed forces did not want because they were physically, mentally or morally unfit. Moral unfitness was determined in part by a man's record. If he had been convicted of a "heinous crime," which was defined to include treason, murder, rape, kidnaping, arson, sodomy, pandering, and crimes involving sex perversion or dealing in narcotics, he became "IV F." The same was true if he had been twice convicted of other crimes which were punishable by one year or more in prison; and the same was true if he was a "chronic offender."[20] In other words, a mere record was not enough to keep a man out of service: it had to be a bad one. Indeed, if a man were in jail for the first time and for a crime that was not "heinous," he became eligible for induction into the armed forces immediately upon his release.

This type of screening did not last long. By the end of 1942, when the manpower shortage was being felt, the standards had been lowered to take almost anyone. Men accused of crime, even though very serious, frequently were given the option of going to jail or enlisting. So common was this practice that it became virtually codified in the Selective Service regulations in a special procedure.[21] Rules as to hardened criminals, that is, "repeaters," or men who had committed "heinous" crimes, or who previously had been discharged dishonorably from the services, were similarly relaxed. Such men also could get into service, sometimes even directly from jail.[22] A fair conclusion, then, seems to be that few men were kept out of the armed services by Selective Service regulations because of criminal tendencies.

The armed services themselves had further devices for screening out potential criminals, but their effectiveness is open to doubt. A psychiatric examination was given at the time of induction, necessarily quite hurried, and probably directed primarily toward finding sex devia-

20. SELECTIVE SERVICE REGULATIONS, United States Government Printing Office, 1944, Sept. 23, 1940 to Feb. 1, 1942. Vol. III, Sec. XXIV, Par. 362, p. 34.

21. SELECTIVE SERVICE REGULATIONS, United States Government Printing Office, 1944, Feb. 1, 1942 to Feb. 1, 1943, 622.61, p. 277; ENFORCEMENT OF THE SELECTIVE SERVICE LAW, SPECIAL MONOGRAPH 14, United States Government Printing Office, 1951, p. 67-9.

22. ENFORCEMENT OF THE SELECTIVE SERVICE LAW, Special Monograph 14, United States Government Printing Office, 1951, pp. 67-74; LOCAL BOARD MEMORANDA (United States Government Printing Office, 1945) June 25, 1941 to Jan. 1, 1945 Memoranda nos. 77-1 to 77-13 incl.

tions rather than criminal tendencies. There also were administrative methods of discharging undesirables after they were in service. Only 52,000 such discharges seem to have been given during the entire war,[23] most of them presumably for physical or mental incapacity, rather than for criminal habits or tendencies. In any event, 52,000 is quite an insignificant figure when dealing with the total number of persons in uniform during World War II.

The conclusion that most criminals were not in fact screened out by Selective Service authorities or by the armed forces themselves is supported by the estimate that there were between 100,000 and 200,000 ex-convicts serving in the armed forces during World War II.[24] These figures do not include those inducted on the "jail or fight" basis already mentioned.

Jurisdiction

The next question to be considered concerns the extent of criminal jurisdiction possessed by military authorities. Do they have power to punish servicemen for as wide a variety of offenses as civilian authorities have with respect to civilians?

During World War II, men in the Army and Air Force were subject to the Articles of War, and men in the Navy, to the Articles for Government of the Navy. Both codes made punishable in military tribunals a great many civilian-type crimes—murder, rape, larceny, and the like.[25] Not all crimes known to civilian life were specifically enumerated, but those not mentioned were nevertheless chargeable under the so-called "general" articles.[26] These notorious dragnets covered not only vaguely defined military misconduct, but also all acts which could possibly result in criminal prosecution in civilian life, not on the theory that such acts fitted the definition of some civilian criminal statute but rather on the theory that they constituted "conduct unbecom-

23. H. R. Misc. Rep. No. 1510, 79th Cong., 2d Session, Jan. 30, 1946.

24. SHATTUCK, *Military Service for Men with Criminal Records* IX FEDERAL PROBATION No. 1, p. 14, 1945.

25. Articles of War 92 and 93; Articles for the Government of the Navy (hereafter "A.W." and "A.G.N.", respectively), Art. 6, 8.

26. The Army Articles of War read as follows: A. W. 95: "Any officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service." A. W. 96: "Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the miltary service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court." Navy Article 22a: "Offenses not specified.—All offenses committed by persons belonging to the Navy which are not specified in the foregoing articles shall be punished as a court-martial may direct."

ing an officer and gentleman" or "conduct of a nature to bring discredit upon the military service" or "disorders and neglects to the prejudice of good order and military discipline" or other crimes or offenses of which persons in the armed services might be guilty. The same is true today under the new Uniform Code of Military Justice: some crimes are enumerated specifically; all others can be charged under general articles.[27] Even the limitation which prevailed under the old Army code to the effect that murder and rape could not be tried by military tribunals if committed in time of peace within the continental limits of the United States has been removed.[28]

Furthermore, military jurisdiction is not limited to civilian type crimes. It also extends to a wide variety of other offenses unknown to civilian life. These are the so-called "military offenses," to be discussed later.

Nor are there any geographical limits on military jurisdiction. The fact that a serviceman commits a crime away from the military reservation at which he is serving or even outside the United States does not deprive military authorities of power to punish him for it. Civilian criminal jurisdiction is much more narrowly circumscribed. For example, the New York authorities can only punish persons for crimes that they commit in New York. If a New Yorker murders someone in California, he can be tried only in that state. Similarly, the Federal authorities, generally speaking, can try a man only for a crime committed in the United States.[29] But military authorities can punish a serviceman for a crime committed anywhere in the world. Their power is dependent not upon the place where a crime is committed, but on the military status of the person committing it.[30]

If a crime is committed by a serviceman inside of the United States, he normally is subject to punishment by civilian as well as military authorities. This, however, does not appreciably cut down the volume of criminal business handled by the military authorities, because the

27. Uniform Code of Military Justice (hereafter "U.C.M.J."), Art. 133: "Any officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct." U.C.M.J., art. 134: "Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this code may be guilty, shall be taken cognizance of by a general or special or summary court-martial, accordance to the nature and degree of the offense, and punished at the discretion of such court."

28. U.C.M.J., arts. 118, 120. The restriction under the old code does not affect the comparisons made in this article, as the period compared is during time of war, when military courts had jurisdiction over these offenses regardless of where committed.

29. *Cf.* United States v. Bowman (1922), 260 U.S. 94.

30. U.C.M.J., arts. 2, 3, 5; Preamble to old Articles of War.

civilian authorities, although possessing power to try servicemen, are reluctant to use it. They generally prefer to return military culprits to military control. Usually local working arrangements are developed between military and civilian authorities along this line. During World War II, the standard practice, so far as the Army was concerned at least, was for military courts to handle all cases involving servicemen, murder and rape included.[31]

As to crimes committed by servicemen outside of the United States, the military authorities have exclusive jurisdiction. By the rules of international law, American servicemen in hostile territory are not subject to trial by the local civilian courts, but only to trial by American military courts.[32] The same is true when American forces are in friendly territory.[33] In fact, during World War II, England codified this rule of international law into a statute.[34]

Thus, whether considered from the point of view of subject matter or geography, military jurisdiction is adequate to deal with all crimes committed by men in the armed forces.

Conditions of Military Life

The final question to be considered in appraising the tentative conclusions reached earlier in this article is whether conditions of life in the armed forces are such as to diminish crime among servicemen. A clear answer is impossible because so little is known about the causes of crime. There are, however, a few facts that can be noted.

Economic motivation for crime probably is diminished for many men in the service. There at least they have jobs. Some doubtless think they have to have more money, but on the whole, they don't fare so badly that they are likely to consider crime necessary to life. Also, some men are removed from gangs or other vicious associations in civilian life. Perhaps they can find equally vicious associates in the services, but at least it takes time. Some men are removed from familiar opportunities and instrumentalities for the commission of crime. For example, a man in civilian life might have an established criminal business in the numbers racket or bootlegging. Upon induc-

31. It should be noted, incidentally, that even though a serviceman is tried by a state court, he is still subject to trial by court-martial for the same offense, and cannot avail himself of the defense of double jeopardy. If, however, he is tried by a Federal court, the defense of double jeopardy does apply. *Cf.* Grafton v. United States (1907), 206 U.S. 333.

32. Dow v. Johnson, 100 U.S. 158 (1879).

33. *Ibid.*

34. 5 & 6 Geo. 6 c 31, (Visiting Forces Act, 1942) (Vol. 36, Chitty's English Statutes, 6th Ed. 1942, p. 17).

tion, he would be removed from his old facilities. He probably could find new opportunities in the service, but again it would take time. These factors tend to diminish crime in the armed services.

On the other hand, men are removed from the restraining influences of civilian life: their families, their jobs, their friends, and their home communities. Uprooted, and clothed with the anonymity of uniforms, many of them are subjected to temptations never known before, and many of them are given hitherto unknown opportunities for criminal conduct. Such factors tend to increase crime in the armed forces.

How should these competing factors be weighed? We do not know.

A still greater uncertainty is involved in attempting to compare the type of criminal conduct committed by servicemen with that committed by civilians. As shown earlier, servicemen can be punished by military authorities for all crimes known to civilian life; but do servicemen in fact commit all of the types of crime for which civilians can be punished? On the other hand, do they engage in any types of conduct for which they can be criminally punished, but for which civilians cannot?

It is evident that there are many regulations in civilian life, backed by criminal sanctions, which have little or no application to men in the armed forces. Off-hand examples are the pure food and drug laws, and regulations as to the conduct of business enterprises. To the extent that servicemen cannot or do not commit such crimes, our earlier statistical conclusions as to the percentage of the nation's total crime potential in the armed forces will have to be revised downward.

On the other hand, those conclusions will have to be revised upward to take account of conduct made criminal in the armed forces but not in civilian life. This brings us to a consideration of military offenses, familiar examples of which are absence without leave, desertion, and disobedience of superior officers.[35]

Military Offenses

In civilian life, a man can quit his job, go on strike, or tell his boss to go to the devil without running afoul of the criminal law. In fact, he is protected by law in the exercise of such rights. Once he becomes a soldier or sailor, however, he can be tried by court-martial if he does any of these things. Quitting one's job is called "desertion." Going on strike is called "mutiny." Defying one's boss is called "wil-

35. U.C.M.J., arts. 85, 86, 90; A.W. 58, 61, 64; A.G.N., arts. 4 (2) (6), 8 (19) (21).

ful disobedience of the lawful order of a superior officer." All are subject to severe penalties, even death in time of war.[36]

The most that can happen to a man for equivalent conduct in civilian life is loss of his job. That economic sanction, for obvious reasons, is not available in military life. Some other means must be found to deal with men who fail or refuse to do their jobs. The historical answer has been the creation of military offenses, substituting criminal sanctions in military life for conduct which in civilian life would be handled by economic sanctions.

Military offenses are no less serious than civilian crimes. They pose problems which involve the very existence of the military establishment and which are certainly no less difficult than those posed by ordinary civilian-type crimes. They are handled in the same way and punished in the same way. In fact, during World War II, military offenses generally carried heavier penalties than civilian-type crimes. For example, for armed robbery—unquestionably a serious civilian-type crime—the maximum punishment in the Army was ten years in jail; but for absence without leave—one of the lesser military offenses ——the maximum punishment was life imprisonment,[37] with sentences actually imposed not infrequently running beyond the maximum possible penalty for armed robbery.[38]

Military offenses (which are entirely beyond the jurisdiction of civilian authorities) account for the greater part of the work involved in the administration of military justice. Two-thirds of all persons imprisoned by sentence of court-martial were convicted solely of military offenses. The remaining one-third were found guilty of either civilian-type crimes alone or civilian and military offenses combined.[39]

Whether the absence of certain types of civilian crimes in the armed forces is compensated by the presence of military offenses, we do not know—any more than we know whether conditions of military life tend to increase or decrease crime. In the absence of further knowledge about the causes and incidence of crime, any *a priori* judgment which would invalidate the statistical conclusions already reached seems unjustified.

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36. MANUAL FOR COURTS-MARTIAL, (hereafter "MCM"), United States Army 1928, Par. 104; MCM, 1951, Par. 127.
37. MCM, U.S. Army 1928, par. 104.
38. The fact that the armed forces had elaborate clemency procedures does not invalidate this observation. Clemency was exercised not only with respect to military offenses, but also with respect to civilian-type offenses. Furthermore, clemency is not unique to the armed forces. It exists in civilian systems of criminal justice.
39. MACCORMICK AND EVJEN, *Statistical Study of 24,000 Military Prisoners* X FEDERAL PROBATION No. 2, pp. 6-8.

CRIMINAL CASES TRIED

Another method of measuring the relative scope of military justice is to compare the number of criminal cases handled by courts-martial with the number handled by civilian courts. Since there are no reliable statistics covering civilian courts for the entire nation,[40] our starting points are the New York and the Federal courts.

In 1945, there were approximately 730,000 trials by courts-martial.[41] During the same period, there were about 37,500 criminal cases tried in all of the Federal courts[42]—a ratio of about 1 to 20. At about the same time and for an equal period—July 1, 1944 to January 30, 1945—the courts of the state of New York handled about 207,000 cases[43]—a ratio of about 1 to 3. Even adding together all of the criminal cases tried by both the Federal and New York courts (244,500), we find that courts-martial handled almost three times that many. The New York figures do not include cases involving violations of local ordinances generally, but do include motor vehicle violations except for parking.[44] The military figures do not include cases disposed of by "company punishment"—a form of administrative disciplinary action used extensively for minor offenses.[45] Hence, the comparison, though far from exact, seems a fair one, since very minor offenses are excluded in both computations.

The ratio of cases tried as between military courts and the courts of New York corresponds closely to the 3 to 1 ratio of crime potential as between the same two systems already discussed. Perhaps this correspondence is merely fortuitous. There are many uncertainties involved. Some we have already discussed: the effectiveness of attempting to screen out potential criminals from the armed forces; the dual jurisdiction of military and civilian courts over civilian-type offenses committed by servicemen; the presence of military offenses as against the absence of certain civilian-type offenses among servicemen; the conditions of military life as compared with those of civilian life; the

40. The statistics found in JUDICIAL CRIMINAL STATISTICS, U.S. Dept. of Commerce, Bureau of Census, Washington, D. C., are of limited value, since only about 25 states report normally, and even among them, the methods of reporting are not uniform.

41. THE ARMY ALMANAC, United States Government Printing Office 1950, p. 742 lists the army figure for 1945 as 480,219. The Navy figure of 258,383, obtained directly by correspondence from the Navy Department, was added to the Army figure for the total used here. It is assumed that the figures for the Army and Navy include the Marines and the Air Corps.

42. Annual Report (1950), Administrative Office of the U.S. Courts, p. 116. This was a peak year for the Federal courts.

43. Twelfth Annual Report, N. Y. Jud. Council, 1946, pp. 154-157.

44. *Ibid.*

45. See U.C.M.J., art. 15; *cf.* old A. W. 104.

equivalence or lack of it between civilian and military judicial statistics. Still other uncertainties are present. Is there a better system for discovering, reporting and trying crime in military life than in civilian life? Does "discipline" in the armed forces prevent crime? Or does it incite crime? Do all of the various factors which might be thought to increase crime in the armed forces cancel out all of the various factors which might be thought to decrease crime? Whatever one's answers to questions such as these may be, the fact remains that we have discovered in comparing New York's system of criminal justice with that of the armed forces, a close correspondence between the ratio of crime potential and the ratio of criminal cases tried. Unless New York is an unfair sample, therefore, we should expect the same correspondence to prevail in a comparison of military with civilian criminal justice through the whole nation. There is no reason to believe that New York is an unfair sample.

Assuming, then, that the ratio of cases tried will correspond to the ratio of crime potential, we conclude that the armed forces at peak mobilization in World War II not only handled one-third of the nation's crime potential, but also that their courts handled one-third of all criminal cases tried in the nation, with the remaining two-thirds being divided between 49 civilian systems.

MILITARY JUSTICE IN TIME OF PEACE

Thus far our discussion has dealt with military justice in time of war. What about the system in time of peace, or "cold" war? Is it still a significant factor in the total administration of criminal justice in the nation?

Present mobilization plans call for a fighting force of four million persons,[46] all subject to the Uniform Code of Military Justice, administered by a single system of courts. Based upon past experience, 70 court-martial trials per year can be expected for each 1,000 men in the armed forces.[47] Applying this figure to a fighting force of four million, we arrive at the conclusion that 280,000 court-martial trials are to be anticipated per year. This compares with about 267,000 criminal cases tried by the courts of New York during 1949, the last year for which statistics are available.[48] Thus, even without a large-scale war,

46. TIME MAGAZINE, Oct. 1, 1951, p. 18; U. S. NEWS AND WORLD REPORT, Oct. 26, 1951, p. 10; NEW YORK TIMES, Oct. 21, 1951. Page 55, col. 3.

47. This is a conservative figure. General Marshall, commenting on improved morale in the Army in 1940, noted that court-martial rates per 1000 men fell from 90 to 78 that year. THE WAR REPORTS OF MARSHALL, ARNOLD AND KING (Lippincott 1947) p. 55. In direct correspondence with the Air Force, the authors of this article learned that the rate per 1000 men per year in the Air Force was 74.3 in 1949 and 66.9 in 1950.

48. SEVENTEENTH ANNUAL REPORT, N. Y. Jud. Council, 1951, pp. 146-9. This figure

it would appear that the military system of justice handles a greater volume of criminal business than that handled by the nation's largest civilian system.

A comparison based on crime potenital is less feasible, chiefly because of a dearth of public information as to the present composition of the armed forces according to sex and age groups. However, assuming that the composition is about the same as during World War II peak mobilization, we can at least make a guess as to the proportion of the nation's crime potential handled by the armed forces at a time like the present. Since present strength is about one-third of World War II peak strength, it would appear that the armed forces are now faced with about one-third of the crime potential that they were faced with in 1945. They then handled one-third of the nation's total crime potential, and consequently now they must be faced with about one-ninth of the total ($1/3 \times 1/3 = 1/9$).

If we are willing again to assume a correspondence between crime potential and criminal cases, we can also make a guess as to what proportion of all criminal cases in the nation are handled by courts-martial at a time like the present. Since one-ninth of the nation's crime potential is to be found in the armed forces, one-ninth of the criminal cases can reasonably be expected to be tried by courts-martial.

Such is the comparison at present. Since the nation seems involved in a continuing crisis, with most responsible leaders agreed that the present state of mobilization must continue for some time to come, the conclusion seems justified that military justice is the largest single system of criminal justice in the nation, not only in time of war, but also in time of peace; now, and as far ahead as we can see.

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excludes local ordinance violations and motor vehicle violations except such as are stated to be "misdemeanors."